

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

April 15, 2014

Elisabeth A. Shumaker
Clerk of CourtMICHAEL ANDERSON; NEW MEXICO
TRANSPORTATION UNION,

Plaintiffs - Appellees,

v.

CITY PERSONNEL BOARD,

Defendant - Appellant,

and

CITY OF ALBUQUERQUE; RICHARD
BERRY, Mayor; ROBERT J. PERRY,
Chief Administrative Officer; BRUCE
RIZZIERI, Transit Department Director,

Defendants.

MICHAEL ANDERSON; NEW MEXICO
TRANSPORTATION UNION,

Plaintiffs - Appellees,

v.

CITY OF ALBUQUERQUE; RICHARD
BERRY, Mayor; ROBERT J. PERRY,
Chief Administrative Officer; BRUCE
RIZZIERI, Transit Department Director,

Defendants - Appellants,

and

CITY PERSONNEL BOARD,

Defendant.

No. 14-2020

(D.C. No. 1:13-CV-01102-JAP-CG)

No. 14-2024

(D.C. No. 1:13-CV-01102-JAP-CG)

ORDER

Before **KELLY, HOLMES**, and **MATHESON**, Circuit Judges.

The defendants appealed the district court’s order remanding the underlying case to New Mexico state court. The clerk’s office directed the appellants to show cause as to why these appeals should not be dismissed for lack of jurisdiction. After reviewing the appellants’ response, the clerk’s office directed the appellees to address jurisdiction separately, which they did. Upon careful review of the responses, the record, and the applicable law, we now dismiss these appeals.

“The authority of appellate courts to review district-court orders remanding removed cases to state court is substantially limited by statute.” Powerex Corp. v. Reliant Energy Svcs., Inc., 551 U.S. 224, 229 (2007). Specifically, “[a]n order remanding a case to State court from which it was removed is not reviewable on appeal or otherwise,” except for certain civil rights cases. 28 U.S.C. § 1447(d). This language has been qualified by interpretation to preclude appellate review if the district court remands on one of the two grounds cited in § 1447(c) – for defects in the removal procedure and for lack of subject matter jurisdiction. Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 711-12 (1996); Kennedy v. Lubar, 273 F.3d 1293, 1297 (10th Cir. 2001). In sum, this court has jurisdiction to review a remand order only if “(1) the remand was for a reason other than lack of subject matter jurisdiction or a defect in the removal procedure or (2) the ‘except’ clause of § 1447(d) gives us jurisdiction because the case

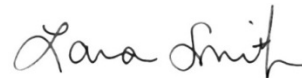
Lambeth, 443 F.3d 757, 759 (10th Cir. 2006).

We plainly do not have jurisdiction under the first option. The district court stated its order granting the plaintiffs’ motion to remand that “removal is deficient.” Appellate review is foreclosed by this language.

The appellants urged the court to find jurisdiction under the second option. They claimed that appellate review is permitted because civil rights violations were alleged in the complaint. See 28 U.S.C. §§ 1443, 1447(d). But as the appellees observed, and the appellants in fact conceded, the appellants did not cite § 1443 as authority for removal in their petition for removal. Even if the failure to cite § 1443 was not fatal to the appellants’ argument, the civil rights violations alleged in the plaintiffs’ complaint are not the type to which the exception in § 1447(d) has been applied. Miller, 443 F.3d at 760-61 (citing Johnson v. Mississippi, 421 U.S. 213, 219 (1975) for principle that to be removable under § 1443 claims must arise under federal law providing for racial equality). The appellants’ arguments and citations otherwise are not persuasive. Thus, we do not have jurisdiction under § 1447(d) either.

Because this court lacks jurisdiction, these appeals are dismissed. The appellees’ request for sanctions is denied.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk



by: Lara Smith
Counsel to the Clerk